



Reminder to Business Clients: 1099 Forms (2015 Tax Year)

This memo is meant to remind you of the requirements to file 1099s for all 2015 payments to unincorporated individuals and businesses of \$600 or more (rents, services, prizes, attorney fees, etc.). The IRS has recently focused its attention on this area, imposing penalties for non-compliance.

Sending 1099 Forms is not voluntary, it is mandatory. If your business paid somebody (other than employees on payroll or for product purchases) the IRS and State Revenue Agencies want to know about it. To ensure you follow the law, business income tax returns (including Schedule C on Form 1040) include a question asking if 1099 Forms were filed as required with your signature, under penalty of perjury, certifying your response to be true.

If you would like us to prepare any required 1099s, please forward us the following information as soon as possible so we can meet the required February 1, 2016 filing date for distribution to those individuals.

- Recipient Name
- Mailing Address
- Tax Identification Number (EIN or SSN)
- \$ Amount Paid in 2015

Please read this memo as a guide and call us with any follow-up questions. We are happy to help.

What to Do Next?

Thoroughly review all disbursements made from January 1, 2015 through December 31, 2015, summarizing all payments to un-incorporated individuals and businesses where accumulated total is \$600 or more. You should make sure that you have the correct name, address, and employer identification or social security number.

The key here is getting a W-9 from every vendor with their Tax Identification Number (SS# or EIN#). A good policy is to request every vendor to complete and provide a W-9 before you pay them. If vendors seem hesitant to give this to you, please blame your accountant. If they still give you a problem, explain that for any employee/contractor who does not provide you with his/her SS # (or EIN #) and/or signs a W9 form, you must withhold 28% of their income prior to make any payment to him/her; it is mandatory. The 28% backup withholding must be remitted to the IRS. If you do not collect and pay backup withholding from affected payees as required, you may become liable for any uncollected amount.

W9 forms must be kept for a minimum 6 years in case you get audited by the IRS and/or the department of labor.



Summary – Should or Should Not 1099-MISC Forms be Filed

A business or trade must file Form 1099-MISC (Miscellaneous Income) for each of its payees that received:

- 1) At least \$10 in royalties or broker payments in lieu of dividends or tax-exempt interest;
- 2) At least \$600 in rents, services (including parts and materials), prizes, awards, other income payments, medical and health care payments, or generally, cash paid from a principal contract to an individual, partnership, or estate;
- 3) Gross proceeds paid to any attorney.
- 4) Accrued wages and vacation paid to a deceased employee's estate or beneficiary,
- 5) Fees paid to corporate directors,
- 6) Direct sales of \$5,000 or more of consumer products for resale anywhere other than a permanent retail establishment.

Some payments are not required to be reported on Form 1099-MISC, although they may be taxable to the payee. Examples of payments for which a Form 1099-MISC is not required include:

- 1) Payments made to a corporation (i.e. a C-corporation or an S-corporation), although there are exceptions (e.g. a law-firm must receive a 1099-MISC even if it is structured as a Corporation);
- 2) Payments for merchandise, telegrams, telephone, freight, storage, and similar payments;
- 3) Payments of rent to real estate agents;
- 4) Wages paid to employees, including differential wage payments made while an employee is on active duty in the Armed Forces;
- 5) Payments to a tax-exempt organization, the United States, a state, the District of Columbia, a U.S. possession, or a foreign government;
- 6) Payments made via credit card, debit card and other 3rd party payment networks (e.g. PayPal)

Due Dates (2015 Tax Year)

- **February 1, 2016** - Furnish Copy B of the 1099-MISC form to the recipient. (Due date is extended to February 16, 2016 if you are reporting payments in boxes 8 or 14.)
- **February 29, 2016** - File Copy A of the 1099-MISC form (and Form 1096) with the IRS. If you file electronically, the due date is March 31, 2016. To file electronically, you must have software that generates a file according to the specifications in Pub. 1220. The IRS does not provide a fill-in form option.
- New Jersey and Pennsylvania also require 1099s by then also. If you are unable to get 1099s out in time, an automatic 30-day extension is available by filing Form 8809.



Penalties

If you fail to file a correct 1099 information return by the due date and you cannot show reasonable cause, you may be subject to a penalty. The penalty applies if you fail to file timely, you fail to include all information required to be shown on a 1099 return, or you include incorrect information on a return. The 1099 penalty also applies if you file on paper when you were required to file 1099s electronically, you report an incorrect TIN (Tax Identification Number), you fail to report a TIN, or you fail to file paper 1099 forms that are machine readable. The penalties were increased this past year.

The amount of the penalty is based on when you file the correct information return. The penalty is:

- \$50 per information return if you correctly file within 30 days (by March 30 if the due date is February 29); maximum penalty \$500,000 per year (\$175,000 for small businesses).
- \$100 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$1,500,000 per year (\$500,000 for small businesses).
- \$250 per information return if you file after August 1 or you do not file required information returns; maximum penalty \$3,000,000 per year (\$1,500,000 for small businesses).

You are a small business if your average annual gross receipts for the 3 most recent tax years (or for the period you were in existence, if shorter) ending before the calendar year in which the information returns were due are \$5 million or less.

Common Areas of Confusion

- 1) Limited Liabilities Companies (LLCs) are not Corporations, and thus not subject to the 'exception' above for Corporations.
- 2) The IRS requires you to exclude from Form 1099-MISC any payments you made by credit card, debit card, gift card, or third-party payment network such as PayPal. (These payments are being reported by the card issuers and third-party payment networks on Form 1099-K.) This relatively new rule started with the 2011 tax filing season.
- 3) You are required to issue a 1099 to your landlord for rent. The exception is if you are making payments to a real estate agent or a Corporation.
- 4) Payments to any attorneys (even if a Corporation) for legal fees that amount to \$600 or more should be reported in box 7 of form 1099-MISC. Report in box 14 of that form payments or gross proceeds paid to an attorney, such as in a settlement agreement, unless the attorney's fees are reportable by you in box 7.